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16287

APR 17 1989 - 10:45 AM

INTERSTATE COMMERCE COMMISSION

April 14, 1989

RECORDATION NO

16287

FILED 1425

APR 17 1989 - 10:45 AM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC

Re: Lease of Locomotives from NBB Pennsylvania
Lease Co., Ltd. to Consolidated Rail
Corporation

Date _____
Fee \$ _____

ICC Washington, D.C.

APR 17 10 48 AM '89
MOTOR OPERATING UNIT

Dear Ms. McGee:

Enclosed are an original and two originally
executed counterparts of the document described below, to be
recorded pursuant to Section 11303, Title 49, of the United
States Code.

This is a Purchase Agreement Dtd 12-15-88
This document is an Assignment Agreement, a
secondary document, dated as of April 14, 1989. The primary
document to which this Assignment Agreement is connected is
a Purchase Agreement attached as ~~Exhibit 1~~ to the Assignment.
This primary document is ~~not~~ being presented for filing.

The names and addresses of the parties to the
Assignment Agreement are as follows:

Assignor:
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, PA 19103

Assignee:
NBB Pennsylvania Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Consolidated Rail Corp - Buyer
General Electric Co. - Seller

Consolidated Rail Corp - Buyer

Ms. Noreta R. McGee
April 14, 1989
Page 2

A description of the equipment covered by this document follows:

Twenty-five (25) General Electric Dash 8-40C diesel electric locomotives marked on the sides with the words "Ownership Subject to Documents Filed with the Interstate Commerce Commission" and bearing a nameplate with the legible inscription "TITLE TO THIS LOCOMOTIVE IS HELD BY NBB PENNSYLVANIA LEASE CO., LTD., THE LESSOR, WHICH HAS LEASED THIS LOCOMOTIVE TO CONSOLIDATED RAIL CORPORATION" and the twenty-five (25) locomotives bear the road numbers 6025 through 6049 inclusive.

A fee of Thirteen Dollars (\$13.00) is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Rebecca A. Craft, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

A short summary of the document to appear in the index follows:

Assignment between Consolidated Rail Corporation, 6 Penn Center Plaza, Room 1310, Philadelphia, PA 19103 and NBB Pennsylvania Lease. Co., Ltd., 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan dated as of April 14, 1989 relating to the purchase of twenty-five (25) General Electric Dash 8-40C diesel electric locomotives.

RECORDATION NO. 16237 A
FILED 1428

[EXECUTION COPY]

APR 17 1989 - 9:55 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AGREEMENT

Dated as of April 14, 1989

FOR

TWENTY-FIVE GENERAL ELECTRIC DASH 8-40C

DIESEL ELECTRIC LOCOMOTIVES

CONSOLIDATED RAIL CORPORATION, as Assignor

NBB PENNSYLVANIA LEASE CO., LTD., as Assignee

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 Annex A Consent, Agreement and Limited Joinder	

THIS ASSIGNMENT AGREEMENT, dated as of April 14, 1989, between CONSOLIDATED RAIL CORPORATION, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103 (the "Assignor") and NBB PENNSYLVANIA LEASE CO., LTD., a Japanese corporation with its registered office at 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan (the "Assignee").

WITNESSETH:

WHEREAS, pursuant to the Purchase Agreement (as hereinafter defined), the Manufacturer (as hereinafter defined) has agreed to manufacture and sell to the Assignor, and the Assignor has agreed to purchase from the Manufacturer, twenty-five General Electric Dash 8-40C diesel electric locomotives;

WHEREAS, the Assignor, on the terms and conditions hereinafter set forth, is willing to assign to the Assignee certain of the Assignor's rights and interests under the Purchase Agreement, and the Assignee is willing to accept such assignment, as hereinafter set forth, in order to enable the Assignee to purchase the Items of Equipment (as hereinafter defined) from the Manufacturer and to lease the Items of Equipment to the Assignor pursuant to the Lease Agreement (as hereinafter defined); and

WHEREAS, pursuant to the provisions hereof, the Manufacturer is willing to execute and deliver to the Assignee the "Consent, Agreement and Limited Joinder" attached hereto as Annex A and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 For all purposes of this Agreement, the following terms shall have the following meanings:

"Delivery Date" means the date of the initial Lease Supplement for the Items of Equipment, which date shall be the date on which the Items of Equipment are delivered to and accepted by the Assignee under this Agreement and the Purchase Agreement and the Assignee leases the Items of Equipment to the Assignor pursuant to the Lease Agreement.

"Dollars" or "\$" means the lawful currency of the United States of America.

"Item of Equipment" means each of the General Electric Dash 8-40C diesel electric locomotives listed by Lessee's road numbers in the initial Lease Supplement.

"Lease Agreement" means the Lease Agreement dated as of April 14, 1989 between the Assignee, as lessor, and the Assignor, as lessee, and all annexes, exhibits, schedules and supplements thereto, all as amended, modified or supplemented from time to time.

"Lease Supplement" means the Lease Supplement, substantially in the form of Exhibit A to the Lease Agreement, to be entered into between the Assignor and the Assignee for the purpose of leasing the Items of Equipment under and pursuant to the terms of the Lease Agreement, and any amendment to the Lease Supplement.

"Manufacturer" means General Electric Company, a New York corporation, and its successors and assigns.

"Participation Agreement" means the Participation Agreement dated as of April 14, 1989 among the Assignor, as Lessee, Barclays Bank PLC, Tokyo branch, as lender, and the Assignee as Lessor, and all annexes, exhibits, schedules and supplements thereto, all as amended, modified or supplemented from time to time.

"Purchase Agreement" means the Purchase Agreement attached as Exhibit I dated as of December 15, 1988 between the Manufacturer and the Assignor providing, among other things, for the manufacture and sale by the Manufacturer to the Assignor of twenty-five General Electric Dash 8-40C diesel electric locomotives, as such Purchase Agreement has been or may hereafter be amended, modified or supplemented.

"Purchase Price" means \$32,485,325.00.

1.2 Except as otherwise provided herein, all other capitalized terms that are defined in Appendix A to the Participation Agreement are used herein with the same meanings.

SECTION 2. ASSIGNMENT AND SALE

2.1 Subject to the terms and conditions of this Agreement, the Assignor does hereby assign, transfer and set over unto the Assignee all the Assignor's rights and interests in and to the Purchase Agreement (except to the extent reserved below), including, without limitation:

(a) the right upon valid tender by the Manufacturer to purchase the Items of Equipment pursuant to

the Purchase Agreement (including the right to accept delivery of the Items of Equipment and the records and other documents relating thereto), the right to take title to the Items of Equipment and the right to be named the "Buyer" in the Bill of Sale to be delivered by the Manufacturer for the Items of Equipment pursuant to the Purchase Agreement;

(b) all claims for damages in respect of the Items of Equipment arising as a result of any default by the Manufacturer under the Purchase Agreement including, without limitation, all warranty and indemnity provisions contained in the Purchase Agreement, and all claims arising under or in connection with the Purchase Agreement, in respect of the items of Equipment;

(c) any and all rights of the Assignor to compel performance of the terms of the Purchase Agreement in respect of the Items of Equipment;

(d) all rights and remedies that the Assignor may have against the Manufacturer with regard to each Item of Equipment in respect of any warranty under the Purchase Agreement as to title, materials, workmanship, patent infringement or otherwise;

(e) with respect to the Items of Equipment, for so long as the Items of Equipment are owned by the Assignee but not leased to the Assignor, (i) the right to demand, accept and retain all rights in and to all property (other than the Items of Equipment), data and services that the Manufacturer is obligated to provide or does provide pursuant to the Purchase Agreement, and (ii) the right to obtain services pursuant to the Purchase Agreement;

reserving to the Assignor, however,

(i) all the rights to, interests in, credits for and repayment of any advance payments made and to be made in respect of the Items of Equipment under the Purchase Agreement and any other payments made or to be made by the Assignor in respect of the Items of Equipment under the Purchase Agreement and amounts credited or to be credited by the Manufacturer under the Purchase Agreement; and

(ii) with respect to the Items of Equipment, so long as the Items of Equipment are leased to the Assignor pursuant to the Lease Agreement, (A) the right to demand, accept and retain all rights in and to all property (other than the Items of Equipment), data and services that the Manufacturer is obligated to provide or does provide pursuant to the Purchase Agreement, and (B) the right to obtain services pursuant to the Purchase Agreement.

2.2 The Assignee hereby accepts the foregoing assignment, subject to the terms hereof.

2.3 Notwithstanding the foregoing, so long as the Assignee has not declared the Lease Agreement to be in default pursuant to Section 15 thereof, and after such declaration if and so long as all Events of Default thereunder have been cured in accordance with the Lease Agreement, the Assignee hereby authorizes the Assignor to exercise to the exclusion of the Assignee, and the Assignor shall exercise in the Assignor's name, all rights and powers of the "Buyer" under the Purchase Agreement including, without limitation, the right to retain any recovery or benefit resulting under the Purchase Agreement in respect of the Items of Equipment, except that;

(a) the Assignor may not exercise any of the rights assigned hereunder referred to in clause (a) of Section 2.1 unless prior to the exercise thereof the Assignee shall have delivered on the Delivery Date to the Manufacturer written notice that the Assignee has released such rights with respect to the Items of Equipment; and

(b) the Assignor shall not enter into any change order or other amendment, modification or supplement to the Purchase Agreement without the prior written consent of the Assignee if such change order, amendment, modification or supplement would:

(i) substitute another diesel locomotive for an Item of Equipment that the Assignee is entitled to purchase under the Purchase Agreement;

(ii) increase the purchase price of any Item of Equipment to an amount in excess of the Purchase Price (without prejudice to the operation of Section 7);

(iii) postpone the Delivery Date beyond April 30, 1989 (without prejudice to the operation of Section 7); or

(iv) except as provided in the Purchase Agreement, result in any rescission, cancellation or termination of the Purchase Agreement.

2.4 Notwithstanding any provision herein to the contrary, the assignment set forth in Section 2.1 (b), (c), (d) and (e) shall terminate with respect to any Item of Equipment, and all such rights and remedies thereunder with respect to such Item of Equipment shall revert to the Assignor, upon the purchase by the Assignor of such Item of

Equipment pursuant to Section 9, 15 or 19 of the Lease Agreement.

2.5 It is understood that the execution by the Assignor of this Agreement is subject to the condition that concurrently with the delivery of the Items of Equipment, the Assignee shall lease the Items of Equipment to the Assignor under the Lease Agreement.

SECTION 3. PERFORMANCE

3.1 It is expressly agreed that, anything herein contained to the contrary notwithstanding:

(a) prior to the Delivery Date the Assignor shall secure execution by the Manufacturer of the "Consent, Agreement and Limited Joinder" attached as Annex A hereto;

(b) prior to the Delivery Date the Assignor shall perform the obligations to be performed by it with respect to each Item of Equipment under the Purchase Agreement on or before the Delivery Date;

(c) the Assignor shall exercise its rights and perform its obligations under the Purchase Agreement to the extent that such rights and obligations have not been assigned hereunder;

(d) the Assignor will at all times remain liable to the Manufacturer under the Purchase Agreement to perform all the duties and obligations of the "Buyer" thereunder to the same extent as if this Agreement had not been executed;

(e) the exercise by the Assignee of any of the rights assigned hereunder will not release the Assignor from any of its duties or obligations to the Manufacturer under the Purchase Agreement, except to the extent that such exercise by the Assignee will constitute performance of such duties and obligations; and

(f) except as provided in Section 3.5 below, the Assignee will not have any obligation or liability under the Purchase Agreement (including, in particular but without limitation, any liability under Section 10 of the Purchase Agreement for payment of any taxes referred to therein, the obligation for the payment of which will remain with the Assignor as provided in paragraph (d), above) by reason of, or arising out of or in connection with, this Agreement or be obligated to perform any of the obligations or duties of the Assignor under the Purchase Agreement or to make any payment (other than to pay to the Manufacturer an amount equal to the Purchase Price on the Delivery Date, to the extent and upon

the terms and conditions set forth in the Purchase Agreement, this Agreement and the Consent, Agreement and Limited Joinder) or to make any inquiry as to the sufficiency of any payment received by it or to present or file any claim or to take any other action to collect or enforce a claim for any payment assigned hereunder.

3.2 Nothing contained herein will subject the Manufacturer to any liability to which it would not otherwise be subject under the Purchase Agreement or modify in any respect the Manufacturer's contract rights thereunder nor require the Manufacturer to transfer title to or possession of any Item of Equipment prior to receipt of payment in full of the Purchase Price therefor as provided in the Purchase Agreement; provided, that payment by the Assignee of the Purchase Price will constitute payment in full of the purchase price of the Items of Equipment referred to in Section 2 of the Purchase Agreement.

3.3 The Assignor hereby appoints and constitutes, effective upon the occurrence of an Event of Default under the Lease Agreement and so long as such Event of Default is continuing thereunder, the Assignee, and its successors and assigns, the Assignor's true and lawful attorney, irrevocably, with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due under or arising out of or in connection with the Purchase Agreement to the extent that the same have been assigned by this Agreement and, for such period as the Assignee may exercise rights with respect thereto under this Agreement, to endorse any checks, drafts, orders or other instruments in connection therewith and to file any claims or take any action or institute (or, if previously commenced, assume control of) any proceedings and to obtain any recovery in connection therewith that the Assignee may deem to be necessary or advisable with respect to such monies and claims for monies.

3.4 (a) Any notice, demand, request, consent, approval or other communication (a "communication") to be made under or pursuant to this Agreement will be made only in writing and may be given by airmail, telegram, cable, telecopy or telefax or any other customary means of communication, and any such communication shall be effective when delivered (i) if to the Manufacturer at General Electric Company, Transportation Systems Business Operations, 2901 East Lake Road, Erie, PA 16531, Attention: General Manager, Transportation Systems Marketing and Sales Department, Telecopy/Telefax: 814-875-6487, or at such address as Manufacturer may from time to time designate and the Manufacturer shall be entitled and obligated to treat any

such communication made by the Assignee as a communication for all purposes of this Agreement, (ii) if to Assignor, at Six Penn Center Plaza, Philadelphia, Pennsylvania 19103, Attention: Assistant Treasurer-Financing, Telecopy/Telefax: (215) 977-5346, or at such address as Assignor may from time to time designate, and (iii) if to Assignee, at 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan, Attention: General Manager, Telecopy/Telefax: 81-3-281-0215, or at such other address as Assignee may from time to time designate.

(b) The Manufacturer will not be deemed to have knowledge of, and need not recognize, the occurrence, continuance, or discontinuance of an Event of Default under the Lease Agreement or any Item of Equipment being no longer subject to the Lease Agreement unless the Manufacturer has received from the Assignee written notice thereof, and in acting in accordance with the terms and conditions of the Purchase Agreement and this Agreement, the Manufacturer may rely conclusively upon any such notice. To the extent that the Assignee asserts any claims or exercises any rights under the Purchase Agreement, the Manufacturer will deal solely and exclusively with the Assignee as the "Buyer" under the Purchase Agreement. Promptly after all Events of Default under the Lease Agreement have been remedied or such Item of Equipment once again becomes subject to the terms of the Lease Agreement, the Assignee shall give written notice of the same to the Manufacturer, with a copy to the Assignor and upon the Manufacturer's receipt of such notice, the Assignor will have all of the rights that it has hereunder and under the Consent, Agreement and Limited Joinder in the absence of notice from the Assignee of an Event of Default.

3.5 Without in any way releasing the Assignor from any of its duties or obligations under the Purchase Agreement, the Assignee confirms for the benefit of the Manufacturer that, insofar as the provisions of the Purchase Agreement relate to the Items of Equipment in exercising any rights under the Purchase Agreement or in making any claim with respect to any Item of Equipment or other goods or services delivered or to be delivered pursuant to the Purchase Agreement, the terms and conditions of the Purchase Agreement, including, without limitation, the assignment provision will apply to and be binding upon the Assignee to the same extent as the Assignor; provided, however, that nothing contained in this Agreement will in any way diminish or limit the provisions of the Assignor's agreement in Section 8 below with respect to any liability of the Assignee.

SECTION 4. PAYMENTS

4.1 Subject to the satisfaction or waiver by the Assignee of the conditions set forth in Section 3 of the Participation Agreement required to be satisfied on or prior to the Delivery Date and further subject to Section 7 hereof, the Assignee agrees to pay on the Delivery Date to the Manufacturer, in consideration for the transfer of all the right, title and interest in and to the Items of Equipment in accordance herewith, the Purchase Price in the manner specified in Section 8 of the Purchase Agreement.

4.2 Notwithstanding any other provision herein, in the event that any change in any applicable law, rule or regulation or in the interpretation or administration thereof will make it unlawful for the Assignee to pay or fund the Purchase Price, then the Assignee will forthwith notify the Assignor thereof, and the obligation of this Agreement, including that of the Assignee to pay the Purchase Price pursuant to Section 4.1, will, if such payment has not been made, cease to have any effect and this Agreement will be without further force or effect, except that the Assignor will remain responsible to the Manufacturer under Sections 3.1(d) and (e) of this Agreement and except that such termination will not affect the obligations of the Assignor under the Purchase Agreement.

SECTION 5. FURTHER INSTRUMENTS

The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may reasonably request in order to obtain the full benefits of this Agreement and of the rights and powers herein granted.

SECTION 6. REPRESENTATIONS AND WARRANTIES

6.1 The Assignor hereby represents and warrants that:

(a) a true and complete copy of the Purchase Agreement has been furnished to the Assignee;

(b) the Purchase Agreement is in full force and effect and is enforceable in accordance with its terms;

(c) the Assignor is not in default under the Purchase Agreement;

(d) the Purchase Price constitutes full, adequate and fair consideration for the Items of Equipment; and

(e) the Assignor has not assigned, mortgaged, charged, pledged or encumbered the whole or any part of the rights assigned hereby with respect to any or all of the Items of Equipment under the Purchase Agreement to anyone other than the Assignee.

6.2 The Assignor hereby covenants that:

(a) the Assignor shall not assign, mortgage, charge, pledge or encumber, so long as this Agreement remains in effect, the whole or any part of the rights hereby assigned with respect to any or all of the Items of Equipment under the Purchase Agreement to anyone other than the Assignee; and

(b) upon delivery of the Items of Equipment to the Assignee pursuant to the Purchase Agreement and this Agreement, the Assignee will acquire such title to the Items of Equipment as would have been conveyed to the Assignor under the Purchase Agreement but for the execution of this Agreement and that the Items of Equipment will be free and clear of all liens arising from the act of the Assignor.

SECTION 7. TERMINATION

7.1 Upon the occurrence of an Event of Default under the Lease Agreement, or if the Items of Equipment have not been delivered by April 30, 1989, the Assignee will have the right to terminate this Agreement by notice given to the Assignor and the Manufacturer.

7.2 If any of the conditions set forth in Section 3 of the Participation Agreement are not satisfied or waived as of the Delivery Date, the Assignee will have the right to terminate this Agreement by notice to the Assignor and the Manufacturer, whereupon the Assignee will have no further obligation to the Assignor or the Manufacturer hereunder.

7.3 If the Assignee fails to perform its obligation to purchase the Items of Equipment on the Delivery Date, the Assignor will have the right to terminate this Agreement by giving written notice thereof to the Assignee and the Manufacturer.

7.4 Upon such termination neither party will have any further obligations hereunder, except that the Assignor will remain responsible to the Manufacturer under Sections 3.1(d) and (e) of this Agreement and the Assignor will remain liable to the Assignee under Section 8 of this Agreement, and that such termination will not affect the obligations of the Assignor under the Purchase Agreement, including, without limitation, the obligation that, as between the Manufacturer

and the Assignor, should any termination hereunder cause any delay in delivery of the Items of Equipment, the Assignor will be liable for any costs of such delay under the Purchase Agreement.

SECTION 8. INDEMNITIES

The Assignor hereby undertakes to indemnify and hold harmless the Assignee from all claims, costs, expenses, damages and liabilities of whatever kind and nature imposed on, incurred by or asserted against Assignee in any way relating to or arising out of or in connection with the Purchase Agreement and this Agreement or any action or inaction of the Assignor in connection with the Purchase Agreement and this Agreement unless such claims, costs, expenses, damages and liabilities are attributable to or caused by the willful misconduct or gross negligence of the Assignee.

SECTION 9. GOVERNING LAW; ASSIGNMENT

9.1 This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

9.2 Neither party may assign any of its rights and obligations under this Agreement without the prior written consent of the other and the Manufacturer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CONSOLIDATED RAIL CORPORATION

By: Thomas J. McFadden
Name: Thomas J. McFadden
Title: Manager - Financing

NBB PENNSYLVANIA LEASE CO., LTD.

By: Leonard B. Shavel
Name: Leonard B. Shavel
Title: Attorney-in-fact

STATE OF PENNSYLVANIA :

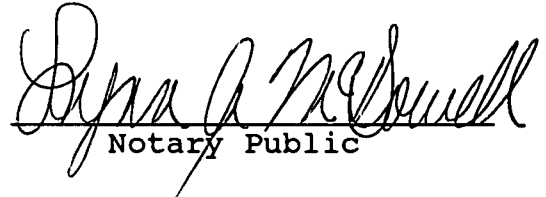
SS

COUNTY OF PHILADELPHIA :

On this, the 14th day of April, 1989, before me, a notary public, the undersigned officer, personally appeared Thomas J. McFadden, who acknowledged himself to be the Manager - Financing of Consolidated Rail Company, a corporation, and that he, as such Manager - Financing, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Manager - Financing.

In witness whereof, I hereunto set my hand and official seal.

(NOTARIAL SEAL)


Notary Public

My Commission Expires:

NOTARIAL SEAL
LYNN A. McDOWELL, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES OCT. 26, 1992
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA :

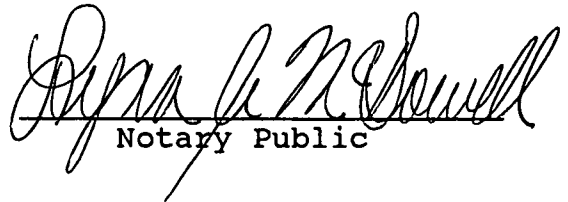
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COUNTY OF PHILADELPHIA :

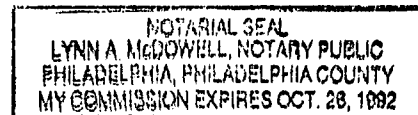
On this, the 14th day of April, 1989, before me, a notary public, the undersigned officer, personally appeared Leonard B. Shavel, who acknowledged himself to be the Attorney-in-fact of NBB Pennsylvania Lease Co., Ltd. corporation, and that he, as such Attorney-in-fact, being duly empowered and authorized to do so, executed the within instrument for the purposes therein contained, by signing his name as such Attorney-in-fact.

In witness whereof, I hereunto set my hand and official seal.

(NOTARIAL SEAL)


Notary Public

My Commission Expires: .



Member, Pennsylvania Association of Notaries